

Department of Energy

§ 625.3

(f) The decision of the Contracting Officer shall be final and conclusive and not subject to review by any forum, tribunal, or Government agency unless an appeal or action is timely commenced within the times specified by the Contract Disputes Act of 1978.

(g) The purchaser shall comply with any decision of the Contracting Officer and at the direction of the Contracting Officer shall proceed diligently with performance of this contract pending final resolution of any request for relief, claim, appeal, or action related to this contract.

(Sec. 644, Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 599 (42 U.S.C. 7254))

PART 625—PRICE COMPETITIVE SALE OF STRATEGIC PETROLEUM RESERVE PETROLEUM

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APPENDIX A TO PART 625—STANDARD SALES PROVISIONS

AUTHORITY: 15 U.S.C. 761; 42 U.S.C. 7101; 42 U.S.C. 6201.

SOURCE: 48 FR 56541, Dec. 21, 1983, unless otherwise noted.

§ 625.1 Application and purpose.

This part shall apply to all price competitive sales of SPR petroleum by DOE. This section provides the rules for developing standard contract terms and conditions and financial and performance responsibility measures; notifying potential purchasers of those terms, conditions and measures; choosing applicable terms, conditions and measures for each sale of SPR petroleum; and notifying potential purchasers of which terms, conditions and measures will be applicable to particular sales of SPR petroleum.

§ 625.2 Definitions.

(a) *DOE*. DOE is the Department of Energy established by Public Law 95-91 (42 U.S.C. 7101 *et seq.*) and any component thereof including the SPR Office.

(b) *Notice of Sale*. The Notice of Sale is the document announcing the sale of SPR petroleum, the amount, type and location of the petroleum being sold, the delivery period and the procedures for submitting offers. The Notice of Sale will specify which contractual provisions and financial and performance responsibility measures are applicable to that particular sale of petroleum, and will provide other pertinent information.

(c) *Petroleum*. Petroleum means crude oil, residual fuel oil or any refined petroleum product (including any natural gas liquid and any natural gas liquid product) owned or contracted for by DOE and in storage in any permanent SPR facility, or temporarily stored in other storage facilities, or in transit to such facilities (including petroleum under contract but not yet delivered to a loading terminal).

(d) *Price Competitive Sale*. A price competitive sale of SPR petroleum is one in which contract awards are made to those responsive, responsible persons offering the highest prices; sales conducted pursuant to rules adopted under section 161(e) of the Energy Policy and Conservation Act (EPCA), Public Law 94-163 (42 U.S.C. 6201 *et seq.*), are not price competitive sales.

(e) *Purchaser*. A purchaser is any person or entity (including a Government agency) which enters into a contract with DOE to purchase SPR petroleum.

(f) *SPR*. SPR is the Strategic Petroleum Reserve, that program of the Department of Energy established by title I, part B of EPCA.

(g) *Standard Sales Provisions*. The Standard Sales Provisions are a set of terms and conditions of sale, which may contain or describe financial and performance responsibility measures, for petroleum sold from the SPR under this part.

§ 625.3 Standard sales provisions.

(a) *Contents*. The Standards Sales Provisions shall contain contract clauses which may be applicable to price competitive sales of SPR petroleum, including terms and conditions of sale, and purchaser financial and performance responsibility measures, or descriptions thereof. At his discretion, the Secretary or his designee may

specify in a Notice of Sale which of such terms and conditions, or financial and performance responsibility measures, shall apply to a particular sale of SPR petroleum; and, he may specify any revisions in such terms, conditions and measures, and any additional terms, conditions and measures which shall be applicable to that sale, that are consistent with the SPR Drawdown Plan adopted on December 1, 1982.

(b) *Acceptance by offerors.* All offerors must, as part of their offers for SPR petroleum in response to a Notice of Sale, agree without exception to all contractual provisions and financial and performance responsibility measures which the Notice of Sale makes applicable to the particular sale.

(c) *Award of contracts.* No contract for the sale of SPR petroleum may be awarded to any offeror who has not unconditionally agreed to all contractual provisions and financial and performance responsibility measures which the Notice of Sale makes applicable to the particular sale.

(d) *Contract documents.* The terms and conditions which the Notice of Sale makes applicable to a particular sale may be incorporated into a contract for the sale of SPR petroleum by reference to the Notice of Sale.

§ 625.4 Publication of the Standard Sales Provisions.

(a) *Publication.* The Standard Sales Provisions shall be published in the FEDERAL REGISTER and in the Code of Federal Regulations as an appendix to this rule.

(b) *Revisions of the Standard Sales Provisions.* The Standard Sales Provisions shall be reviewed periodically and republished in the FEDERAL REGISTER, with any revisions.

(c) *Notification of applicable clauses.* The Notice of Sale will specify, by referencing the FEDERAL REGISTER and the Code of Federal Regulations in which the latest version of the Standard Sales Provisions was published, which contractual terms and conditions and contractor financial and performance responsibility measures contained or described therein are applicable to that particular sale.

§ 625.5 Failure to perform in accordance with SPR Contracts of Sale.

(a) *Ineligibility.* In addition to any remedies available to the Government under the Contract of Sale, in the event that a purchaser fails to perform in accordance with applicable SPR petroleum sale contractual provisions, and such failure is not excused by those provisions, the Headquarters Senior Procurement Official, at his discretion, may make such purchaser ineligible for future awards of SPR petroleum sales contracts.

(b) *Determination of ineligibility.* No purchaser shall be made ineligible for the award of any SPR sales contract prior to notice and opportunity to respond in accordance with the requirements of this subsection.

(1) Upon the determination that a purchaser is to be considered for ineligibility, the purchaser shall be sent by certified mail return receipt requested, the following:

(i) Notification that the Headquarters Senior Procurement Official is considering making the purchaser ineligible for future awards;

(ii) Identification of the SPR sales contract which the purchaser failed to comply with, along with a brief description of the events and circumstances relating to such failure;

(iii) Advice that the purchaser may submit in writing for consideration by the Headquarters Senior Procurement Official in determining whether or not to impose ineligibility on the purchaser, any information or argument in opposition to the ineligibility; and

(iv) Advice that such information or argument in opposition to the ineligibility must be submitted within a certain time in order to be considered by the Headquarters Senior Procurement Official, such time to be not less than 21 days.

(2) After elapse of the time period established under paragraph (b)(1) of this section for receipt of the purchaser's response, the Headquarters Senior Procurement Official, at his discretion, and after consideration of the purchaser's written response, if any, may make the purchaser ineligible for future awards of SPR petroleum sales contracts. Such ineligibility shall continue for the time period determined